

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

DAVID A. KRAUSE	:	APPEAL NO. C-090703
		TRIAL NO. A-0700075
and	:	
KAREN KRAUSE	:	<i>JUDGMENT ENTRY.</i>
Plaintiffs-Appellees,	:	
vs.	:	
MITCHELL E. SIMONS, M.D.,	:	
Defendant-Appellant,	:	
and	:	
GREATER CINCINNATI PAIN	:	
MANAGEMENT CENTERS, P.S.C.,	:	
and	:	
LAWRENCE B. ROTHSTEIN, M.D.,	:	
Defendants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Mitchell Simons, M.D., appeals the trial court's judgment overruling his motion to quash plaintiffs-appellees David and Karen Krause's subpoena duces tecum. We conclude that the trial court's denial of Simons's motion to quash is not a final, appealable order, and we therefore dismiss the appeal.

The Krauses sued Simons and defendants Greater Cincinnati Pain Management Centers, P.S.C., and Lawrence B. Rothstein, M.D., for medical negligence related to a cervical epidural steroid injection that had injured David. Simons was not involved in the procedure that had injured David, and the trial court entered summary judgment in his favor.

In March 2009, a jury verdict returned for the Krauses awarding them \$500,000 in punitive damages against defendants GCPMC and Rothstein. After the jury had awarded damages, the Krauses learned that the net worth of GCPMC was zero, and that its assets had been assigned to, and its liabilities assumed by, a separate company owned by Simons, Mitchell E. Simons, M.D., PSC. And in August 2009, the Krauses subpoenaed Simons to produce personal financial records along with other tax and business records. Simons moved to quash that subpoena, and the trial court overruled the motion and ordered production of the documents with the provision that the Krauses maintain the confidentiality of Simons's financial documents. This appeal follows.

Under R.C. 2505.02(B)(4), a final, appealable order is one that grants or denies a provisional remedy and to which both of the following apply: (a) the order in effect determines the action with respect to that provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy; and (b) the appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

We conclude that the denial of the motion to quash is not a final, appealable order because Simons has an effective remedy by way of appeal—that

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

is, he can challenge the propriety of the ruling on the motion on appeal from a final judgment. Moreover, Simons may later move for sanctions and costs if it appears that the Krauses unnecessarily have subjected him to *undue* burden and expense.²

We conclude that the order at issue is not a final, appealable order and accordingly dismiss the appeal.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 23, 2010
per order of the Court _____.
Presiding Judge

² *Fredricks v. Good Samaritan Hosp.*, 2nd Dist. No. 22502, 2008-Ohio-3480.